

Message Text

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USIA-06 IO-13 DHA-02 TRSE-00 /074 W
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FM AMEMBASSY BONN
TO SECSTATE WASHDC 0596
INFO USMISSION USBERLIN
AMEMBASSY BERLIN
AMEMBASSY MOSCOW
AMEMBASSY LONDON
AMEMBASSY PARIS
USMISSION NATO

C O N F I D E N T I A L SECTION 01 OF 03 BONN 13155

E.O. 11652: GDS
TAGS: PGOV BQG
SUBJECT: DISCUSSION OF LORENZ CASE WITH FRG

REFS: (A) USBER 2100; (B) PARIS 23285; (C) BONN 13015;
(D) BONN 12813; (E) 76 BONN 9562;
(F) 76 USBER 2161; (G) BONN 13009

SUMMARY. THE AUGUST 10 BONN GROUP DISCUSSION OF THE LORENZ TRIAL WAS SURPRISINGLY DEVOID OF EMOTION AND ATMOSPHERICS, POSSIBLY BECAUSE OF THE ALLIED TRIPARTITE MEETING OF THE PREVIOUS DAY. THE FRG REP ANSWERED SEVERAL QUESTIONS THAT HAD BEEN PREVIOUSLY POSED AND PROVIDED ADDITIONAL ASSURANCES THAT THE FRG SERIOUSLY INTENDS TO HAVE THE KARLSRUHE ATTORNEYS BE PART OF THE BERLIN OFFICE OF THE FEDERAL PROSECUTOR. THE FRENCH REP SAID THAT PARIS IS SERIOUSLY CONCERNED ABOUT THE MATTER, DOES NOT BELIEVE THAT THE REQUIREMENTS OF THE NON-PAPER HAVE BEEN MET, AND WILL PROBABLY NOT BE
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SATISFIED WITH THE GERMAN POSITION REGARDING THE RELATIONSHIP BETWEEN THE KARLSRUHE ATTORNEYS AND THE BERLIN OFFICE. THE BRITISH MADE THE POINTS THEY HAD DESCRIBED AT THE AUGUST 9 TRIPARTITE MEETING AND WELCOMED THE FRG ASSURANCES REGARDING THE DETAILING OF ATTORNEYS TO BERLIN. THE US REP CONFINED HIMSELF TO EXPRESSING UNDERSTANDING FOR THE GERMAN CONCERNS,

SAID THAT WE WANTED TO SEE PRACTICAL STEPS TAKEN TO ENHANCE THE APPEARANCE OF THE TRIAL AS A BERLIN TRIAL AND SUPPORTED (PER REF C) THE UK SUGGESTIONS. END SUMMARY.

1. IN A BONN GROUP DISCUSSION AUGUST 10 OF THE LORENZ TRIAL, FRG REP (VON BRAUNMUEHL) BEGAN BY MAKING THE FOLLOWING POINTS:

A. THE FOREIGN OFFICE HAS NOT YET RECEIVED A REPLY TO VAN WELL'S LETTER TO THE JUSTICE MINISTRY.

B. THE HEAD OF THE PROSECUTING TEAM, VOELZ, NOW "BELONGS" TO THE BERLIN OFFICE AND IS SUBORDINATE TO AND WILL RECEIVE INSTRUCTIONS FROM THAT OFFICE. HE WILL BE THE "KORRESPONDENZADRESSE" FOR THE TRIAL (MEANING THAT THE COURT WILL DIRECT TO HIM ALL QUESTIONS FOR THE PROSECUTION TEAM).

C. THE FRG VIEW IS THAT THERE IS NO POSSIBILITY OF A CHANGE OF VENUE. AS NOTED IN THE EXPLANATION GIVEN BY JUSTICE DEPARTMENT OFFICIAL, SCHNEIDER, LAST YEAR (REF E), HOLDING THE TRIAL ELSEWHERE THAN IN BERLIN COULD CONSTITUTE GROUNDS FOR APPEAL. FURTHERMORE, ONCE THE TRIAL HAS BEGUN (I.E., AFTER THE COURTROOM PROCEEDINGS COMMENCE) A CHANGE OF VENUE WOULD BE MUCH CONFIDENTIAL

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MORE SERIOUS AND WOULD BE AN EVEN STRONGER BASIS FOR APPEAL.

D. WITH REGARD TO THE METHOD OF ASSIGNING ATTORNEYS TO BERLIN, THE FRG BELIEVES THAT THE CONDITION OF THE NON-PAPER HAS BEEN MET SINCE THE ATTORNEYS WILL "BELONG" TO THE BERLIN OFFICE.

E. WITH RESPECT TO THE QUESTION OF HOW AND WHEN THE PERSONNEL ARE TO BE ASSIGNED TO BERLIN, HE SAID THIS WAS NOT A SUBJECT OF CONSULTATIONS LAST YEAR. IT IS IMPOSSIBLE TO INTERPRET THE NON-PAPER AS REQUIRING THAT THEY BELONG TO THE BERLIN OFFICE AT SOME TIME PRIOR TO THE RECENT ZUTEILUNG (ASSIGNMENT). VON BRAUNMUEHL SAID HE THINKS THEY HAVE ALREADY ARRIVED IN BERLIN BUT IS NOT CERTAIN ON THIS POINT.

F. AS NOTED BEFORE, THE FRG DOES NOT BELIEVE THAT THE PERSONNEL REGULARLY ASSIGNED TO THE BERLIN OFFICE COULD CARRY OUT THE TRIAL SINCE THEY ARE NOT EXPERIENCED IN TRIAL WORK.

G. IN CONCRETE TERMS, HE SAID NOTHING MORE HAS

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HAPPENED SINCE THE FRG'S REPORT OF LAST WEEK (REF D).

2. THE FRENCH REP (RICHARD) SAID THAT PARIS DOES NOT BELIEVE THAT THE REQUIREMENTS OF THE NON-PAPER HAVE BEEN MET, ESPECIALLY WITH REGARD TO THE REQUIREMENT THAT THE ATTORNEYS "BELONG" TO THE BERLIN OFFICE. HE SAID HE BELIEVED THE QUAI WOULD HAVE SOME DIFFICULTY IN ACCEPTING VON BRAUNMUEHL'S EXPLANATION. THE FRENCH APPRECIATE WHAT THE FOREIGN OFFICE HAS DONE IN THIS MATTER BUT ARE ALSO CONCERNED BY WHAT THE SOVIETS HAVE SAID. HE EXPECTED THE QUAI WOULD RETURN TO THE SUBJECT AFTER RECEIVING HIS REPORT OF THE MEETING.

3. THE UK REP (EYERS) TOOK NOTE OF THE "VERY SERIOUS" STATEMENT MADE BY RICHARD. HE PROCEEDED TO STATE THAT, ON INSTRUCTIONS, HE WISHED TO MAKE SEVERAL POINTS AND PROCEEDED TO EXPRESS LONDON'S VIEW AS CONTAINED IN
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REF (G). HE THEN ADDED THAT THE BRITISH UNDERSTAND IT IS NECESSARY TO BRING IN ATTORNEYS FROM KARLSRUHE AND WELCOMED THE EXPLANATION GIVEN BY VON BRAUNMUEHL THAT THEY NOW BELONG TO THE BERLIN OFFICE. HE SAID THAT OF THE FOUR SUGGESTIONS MADE BY LONDON (PARA 4, REF G), THE FRG'S ACTION MIGHT SATISFY THE UK POSITION THAT THE THREE SECONDED LAWYERS SHOULD BE ASSIGNED TO THE BERLIN OFFICE IN GOOD TIME. LONDON WOULD STILL LIKE FOR OBERLE FORMALLY TO HEAD THE PROSECUTION TEAM. (VON BRAUNMUEHL COMMENTED THAT THIS WOULD PROBABLY NOT BE POSSIBLE "FOR PRACTICAL REASONS.") EYERS SAID THAT LONDON'S GENERAL VIEW WAS THAT ALL OUTWARD SIGNS SHOULD SHOW THAT THIS IS A BERLIN COURT DEALING WITH A BERLIN TRIAL. HE NOTED THAT HE WAS INSTRUCTED TO URGE ADOPTION OF THE ALLIED PRESS STATEMENT AND THAT CONSIDERATION THEN MIGHT BE GIVEN TO OTHER STEPS, E.G., AN ALLIED STATEMENT IN THE ALLIED KOMMANDATURA. HE DESCRIBED LONDON'S BASIC AIM AS SEEKING TO ENSURE THAT THE SOVIETS NOT BE UNNECESSARILY PROVOKED WHILE ENSURING THAT THE TRIAL IS CARRIED OUT CONSISTENT WITH LAW AND JUSTICE.

4. THE US REP SAID THAT WHILE HE HAD RECEIVED NO FORMAL INSTRUCTIONS, HE THOUGHT THAT THE REMARKS HE WAS ABOUT TO MAKE WERE BROADLY CONSISTENT WITH THE DEPARTMENT'S VIEWS AT THE PRESENT TIME. HE THEN STATED THAT WE APPRECIATED THE STEPS BEING TAKEN BY THE FOREIGN OFFICE AND HOPED THAT THEY WOULD HAVE A SALUTARY EFFECT. HE SAID WE ARE MINDFUL OF THE IMPORTANCE OF THIS TRIAL TO THE FRG AND THAT WE DO NOT SEEK TO INTERFERE WITH THE MANNER OF CONDUCTING THE TRIAL IN A WAY WHICH COULD BE DETRIMENTAL. OUR PRIMARY INTEREST AT THIS TIME IS TO ENSURE THAT THE TRIAL APPEARED, AS FAR AS POSSIBLE, TO BE CONDUCTED FROM BERLIN AND THAT THE PUBLICITY WHICH

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TENDS TO PROVOKE THE SOVIETS BE AVOIDED INsofar AS POSSIBLE. HE THEN SUPPORTED, IN THE MANNER DESCRIBED IN PARAGRAPH 14 OF REF (C), THE BRITISH SUGGESTIONS.

5. VON BRAUNMUEHL ASKED WHAT DIFFERENCE IT WOULD MAKE TO THE SOVIETS WHETHER THE TRIAL WERE RUN OUT OF KARLSRUHE OR BERLIN. EYERS SAID THAT WE MUST SATISFY OUR OWN STANDARDS IN REPLYING TO SOVIET PROTESTS AND THAT THEY KNOW WHEN WE ADDRESS THEM WITH "AN ILL CONSCIENCE." RICHARD SAID IT IS NECESSARY FOR PROSECUTION OFFICIALS, WHEN THEY EXERCISE THEIR

COMPETENCE IN BERLIN, TO BE EXPRESSLY SUBORDINATE TO THE ALLIED AUTHORITIES. THE US REP RECALLED THAT THE ALLIED ANSWER TO THE SOVIET PROTEST REGARDING THE PRESENCE OF JUSTICE MINISTER VOGEL IN BERLIN HAD STATED THAT THE MINISTER HAD PERFORMED NO ACTS OF LEGAL EFFECT THERE. THE SOVIETS RESPONDED THAT THEY WERE GLAD TO LEARN THAT THE CIRCUMSTANCES WERE NOT AS ILLEGAL AS THEY HAD FEARED BUT THAT THEY STILL CONSIDERED THE PRESENCE OF THE ADMINISTRATIVE COURT IN BERLIN TO BE ILLEGAL (REF F). WE NOTED THAT THE SOVIETS DO APPEAR AT TIMES TO MAKE DISTINCTIONS.

6. THE US LEGAL ADVISER NOTED THE DIFFICULTIES WE HAVE ENCOUNTERED IN THE PAST WITH TRAVEL BY LAND BY OFFICIALS OF ORGANIZATIONS OF WHICH THE SOVIETS OR GDR DISAPPROVE (HE MENTIONED THE FEDERAL ENVIRONMENTAL AGENCY) AND SAID IT WOULD BE USEFUL IF THE ATTORNEYS

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COMING FROM KARLSRUHE COULD AVOID TRAVEL BY LAND TO AND FROM BERLIN AND THAT, SHOULD THEY GO BY LAND, THE ALLIES SHOULD BE CONSULTED IN ADVANCE SINCE INCIDENTS ON THE

AUTOBAHN WOULD EXACERBATE THE EXISTING PROBLEMS. RICHARD THEN MADE THE SAME COMMENTS AS HE HAD AT THE TRIPARTITE MEETING REGARDING SECURITY MEASURES.

7. EYERS SAID THAT IN CONCLUSION HE WOULD LIKE TO MAKE TWO POINTS. FIRST, WHILE THERE ARE DIFFERENCES BETWEEN THE FRG AND THE ALLIES REGARDING OUR RESPECTIVE LEGAL CONCEPTS OF BERLIN'S POSITION, HE HOPED THESE DIFFERENCES WOULD NOT BE ALLOWED TO CREATE DIFFICULTIES. SECOND, HE SAID THAT LONDON'S COMMENTS REGARDING LACK OF COORDINATION WERE NOT DIRECTED TOWARDS THE FOREIGN OFFICE OR THE BONN GROUP AND HOPED THAT WE WOULD BE ABLE TO MAINTAIN THE EXCELLENT RELATIONS AND CLOSE COOPERATION IN THE BONN GROUP WHICH WE HAVE IN THE PAST.
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8. VON BRAUNMUEHL REPLIED THAT THE GERMANS HAD NOT TAKEN LONDON'S COMMENTS AS DIRECTED TO THE FOREIGN OFFICE OR THE BONN GROUP. HE WENT ON TO SAY THAT HE UNDERSTOOD THE POINTS MADE BY THE ALLIES AND THAT THE FOREIGN OFFICE WOULD REPORT TO THE OTHER MINISTRIES. HE SAID THAT IT IS NECESSARY TO UNDERSTAND THAT THE FOREIGN OFFICE FINDS IT DIFFICULT TO MAKE THE ALLIED POSITION CLEAR TO OTHER MINISTRIES, WHO CONSIDER THE LORENZ TRIAL A PERFECTLY NORMAL CASE. HE SAID THAT LEGAL PROCEEDINGS ARE NECESSARILY A SENSITIVE ISSUE AND THAT EVEN PUBLICITY IS DIFFICULT TO CONTROL. HOWEVER, HE PROMISED TO PROVIDE AS SOON AS POSSIBLE THE GERMAN REACTIONS TO THE ALLIED COMMENTS.

9. COMMENT: THE BONN GROUP MEETING WENT SURPRISINGLY SMOOTHLY AND WAS DEVOID OF THE DEGREE OF EMOTION WHICH HAD SURFACED IN THE AUGUST 3 BONN GROUP MEETING AND IN THE TRIPARTITE MEETING OF AUGUST 9. WHILE THE FRENCH TOOK THE HARDEST LINE, RICHARD APPEARED (AS DID EYERS) TO MUTE THE TONE OF THEIR CAPITALS' INSTRUCTIONS. WE BELIEVE THAT THIS IS A SALUTARY DEVELOPMENT AND HOPE THAT THE FOREIGN OFFICE WILL BE SUCCESSFUL IN BRINGING INCREASED ORDER INTO THE HANDLING AND CONTROL OF THE LORENZ TRIAL. STOESSEL

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